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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,963	12/03/2003	Greg Moller	02-018-1	7416

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EXAMINER

CINTINS, IVARS C

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/727,963

Applicant(s)

MOLLER ET AL.

Examiner

Ivars C. Cintins

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 3,6-8,11,12 and 14-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,9,10 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/3/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1724

Applicant's election of Group I, claims 1- 24, in the reply filed on December 21, 2005 is acknowledged. Applicant's election of **mixing metal granules with the filter media and agitating the mixture** as the regenerating agent species is also acknowledged; and Applicant's election of **phosphorous** as the contaminant species is further acknowledged. Because Applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 1, 2, 4, 5, 9, 10 and 13 are deemed to read on the elected invention and the elected species; and claims 3, 6-8, 11, 12 and 14-32 are withdrawn from further consideration, as being directed to a non-elected invention and/or species.

Claims 1, 2, 4, 5, 9, 10 and 13 are directed to an invention that is not patentably distinct from claims 8 and 10 of commonly assigned Application Serial No. 11/171,002. Since claims 1, 2, 4, 5, 9, 10 and 13 do not preclude an ozone oxidation treatment, these instant claims do not distinguish over claims 8 and 10 of commonly assigned Application Serial No. 11/171,002.

The U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP § 2302). Commonly assigned Application Serial No. 10/794,847, discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(e), (f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee can, under 35 U.S.C. 103(c) and 37 CFR 1.78(c), either show that the conflicting inventions were commonly owned at the time the invention in this application was made, or name the prior inventor of the conflicting subject matter.

Art Unit: 1724

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. 102(f) or (g), or 35 U.S.C. 102(e) for applications filed on or after November 29, 1999.

Claims 1, 2, 4, 5, 9, 10 and 13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being anticipated by claims 8 and 10 of Application Serial No. 11/171,002. Since claims 1, 2, 4, 5, 9, 10 and 13 of this application do not preclude an ozone oxidation treatment, these instant claims are deemed to be encompassed by claims 8 and 10 of Application Serial No. 11/171,002.

This is a provisional obviousness-type double patenting rejection.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438; 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969). A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Art Unit: 1724

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 5, 9, 10 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Nikolaidis et al. (U.S. Patent No. 6,132,623; hereinafter “Nikolaidis”). The reference discloses filtering (col. 5, line 8) a contaminant (i.e. arsenic) from wastewater (col. 2, line 65) by passing the wastewater through a moving mixture (col. 5, line 55) of sand (col. 5, line 12) and metal granules (col. 5, line 14); and this is all that is required by claims 1, 2, 4, 5 and 13. The filter media of this reference process will inherently be continuously regenerated for the same reason that Applicant’s mixture of sand and iron granules functions in this manner. Also, the agitated mixture of sand and iron filings in the reference process (see col. 5, lines 12, 14 and 55) will inherently produce some iron oxide coated sand for the same reason that Applicant’s mixture of sand and iron granules produces this material (see ¶ 0015, lines 9-13, of the specification).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1724

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nikolaidis in view of Winchester et al. (U.S. Patent No. 6,200,482; hereinafter "Winchester"). Should it be held that the process of Nikolaidis does not inherently produce iron oxide coated sand, then this primary reference discloses the claimed invention with the exception of this iron oxide coated sand. Winchester teaches that iron oxide coated sand is an efficient filtering media for removing arsenic from water (see col. 2, lines 6-9). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the iron oxide coated sand of Winchester for the sand of Nikolaidis, in order to enhance the arsenic removal capability of the primary reference filtration media.

Blowes et al. (U.S. Patent No. 5,876,606) teaches removing phosphorous contaminants from water with a similar filtration material (see col. 3, lines 2-4). Huling et al. (U.S. Patent No. 6,663,781) discloses a similar process for *in situ* regeneration of a filtration material.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to I. Cintins whose telephone number is 571-272-1155. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Duane Smith, can be reached at 571-272-1166.

The centralized facsimile number for the USPTO is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

Art Unit: 1724

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ivars C. Cintins
Primary Examiner
Art Unit 1724

I. Cintins
March 18, 2006